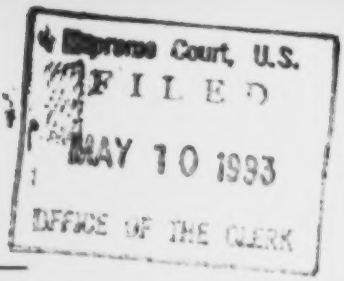
93-3

NO. ____



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

In Re: LONNIE G. SCHMIDT, PETITIONER

V.

KENNETH HALL, RESPONDENTS
FRANCIS MURNAGHAN, and
CLYDE HAMILTON, Judges,

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF MANDAMUS

Lonnie G. Schmidt
P.O. Box 130
Fair Oaks, CA 95628
(916) 967-7368

Appearing Without and
Lacking Counsel

QUESTIONS PRESENTED FOR REVIEW

Am I entitled to due process of law, and if so, was I denied due process of law.

Did the administrative agencies for United States, United States of America and/or the District of Columbia, operating outside of the District of Columbia, deny me due process by failure or refusal to give me a hearing and carry through to a decision with written findings of fact, conclusions of law, bases, reasons and rationale, as records in this case indicate?

Does the law as expressed and implied in 5 USC 101-559, 701-706, and associated codes and statutes, the constitution and underlying fundamental law, provide that I was and am entitled to administrative agency level hearing; and does the denial or evasion of such entitle me to remedy and relief? See U.S. v. General Dynamics, 648

F.Supp. 1497 (1986); California v. Sims, 651 P2d 321 (1982).

Is the question of jurisdiction an element of the criminal charge in my case?

Did the plaintiff/prosecution's failure to state jurisdictional facts, Constitutional facts, which can be said to make out that which constitutes a "self executing" jurisdiction under Article I, Section 8, Clause 3 of the 1787-1789 Constitution, "The Self Executing (or "dormant") commerce clause", which I might have rebutted, deny me due process?

Do the decisions require that the trial judge sua sponte, officially, judicially and otherwise, e.g., personally notice, the absence on the record of plaintiff/prosecution's special and affirmative allegation, pleading and proof of the supposed jurisdictional elements?; and, if so, does the law require reversal

or habeas corpus where this duty is not fulfilled? See U.S. v. Jones, 852 F2d 1235 (9th Cir. NDC 1988).

Did the District of Columbia (e.g., United States, United States of America, et al.) truly authorize the criminal prosecution and imposition of criminal penalty against my Person? and, if so, should the District of Columbia (e.g., United States, United States of America, et al.) have authorized the criminal prosecution and imposition of penalty against my Person?

Is it not true that Article I, Section 9, Clause 3, of the United States Constitution prohibits any form of bills of attainder/pains and penalties -- prohibits the Congress et al., (e.g., its agencies and the agencies of the judiciary and executive, and independant agencies) -- from naming me (my Person, life, liberty,

property, etc.) -- in any legislation, rule, regulation, statute, ordinance, code, etc., and quasi-judicial (administrative) decision, and even a judicial or judicial-like decision, except to declare my absolute immunity to the same? See Diamond Ring Ranch v. U.S., 531 F2d 1397 (Wyo. 10CA 1976); GHSC v. Matthews, 609 F2d 949 (9th Cir. Ore. 1979); NJ v. HEW, 670 F2d 1262 (3CA 1981).

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	vi
AT LAW -- JURISDICTIONAL STATEMENT . .	5
EXTRAORDINARY REMEDIES JURISDICTION STATEMENT	9
DECLARATION (includes Opinions Below)	15
ADOPTION	26
SUMMARY	28
CONCLUSION	30
PRAYER FOR RELIEF	31
VERIFICATION	32
APPENDIX (4th Cir. unpublished per curiam opinion, Order denying petition for rehearing)	1a

TABLE OF AUTHORITIES

Acts of Congress: **Page**

Administrative Procedures Act (APA),
cf. 5 USC 101-559 8

Judicial Review Acts (JRA),
cf. 5 USC 701-703 8

Judiciary Act, 1787-1789 US Statutes
at Large 5

Cases:

Abbot Labs v. Gardner, 387 US 136,
140, 141 (1967) 7, 29

Bank v. Peavey, 69 F 117 10

Bauman v. District Court, 557 F2d 650,
656-61 (9th Cir. 1977) 15

Behan v. Dover, 419 F.Supp. 562 affd.
559 F.2d 1207 (Del. 1976) 7

Billings v. Hall, 7 Calif. App. 1, 6-7,
11.6, 12.2, 14, 15.5 (1857) 12

Bivins v. Six Unknown Narcotics Agents,
403 US 388 (1971) 7

Burks v. Lasker, 441 US 471, 476 & n.5 (1979) 26

Buttery v. GSC, 300 P 1040 4

Butz v. Economu, 438 US 478 (1978) . . 7

California v. Sims, 651 P.2d 321 (1982) ii

Cap. (EMI) v. Bennett, 681 F.2d 1107 (9 CA 1982) 3

Colorado v. VA, 430 F.Supp. 551 affd. 602 F.2d 1241 (9 CA Wa. 1976) 7

Commonwealth ex rel. Reinboth v. Councils of Pittsburgh, 41 Pa. 278 12

Crowell v. Benson, 285 US 22, 51-65 (1932) 27

Diamond Ring Ranch v. U.S., 531 F.2d 1397 (Wyo. 10CA 1976) iv

Dunn v. Blumstein, 405 US 330 (1972) 12

Economy Plumbing v. U.S., 470 F.2d 585 (DC 1972) 3

Enoch v. Williams, 291 F.2d 402 affd.
370 US 1 (9 CA Calif. 1962) . . . 3, 12, 14
Frost v. RC, 271 US 583, 596
(1927) 4
Garvey v. Freeman, 397 F2d 605
(1968) 30
GHSC v. Matthews, 609 F.2d 949
(9th Cir. Ore. 1979) iv
Hale v. Henkel, 201 US 43 (1905) . . . 12
Jaffarian v. Murphy, 183 NE 110,
280 Mass. 402 . . . . . 3, 9
Kirschbaum v. Walling, 316 US 517,
523.5 (1942) 8
Long v. Rasmussen, 281 F. 236-239
(Mont. 1921-2) 3
Miller Brothers Co. v. Maryland, 347 US
340, 342, 345 (1947) 2
Marbury v. Madison, 1 Cr. (5 US) 137
(1803) 5
Mitchell v. Miller, 214 A2d 694
(Conn. 1965) 17

Morgan v. U.S., 346 US 502 (1954) . . 7, 30

NJ v. HEW, 670 F.2d 1262 (3CA 1981) . . iv

Okl. Press v. Walling, 327 US 186 (1946) 11

Panama Refining v. Ryan, 293 US 388 (1935) 3, 9

Redfield v. Fisher, 292 P 813 (Ore. 1930) 12

Rheurk v. Shaw, 628 F2d 297 (5th Cir. 1980) 13

Robbins v. Reagan, 780 F2d 37 (D.C. 1975) 30

Roe v. Wade, 410 US 113 RD 410 US 959 . . . . . 4, 11

San Antonio v. Rodriguez, 411 US 1 (1973) 12

Schecter Poultry Co. v. U.S., 295 US 495 (1935) 3, 9

Spann v. Dallas, 235 SW 513, 15.4-16 (1921) 12

Stark v. Wickard, 321 US 288, 309, 310 (1944) 7, 26, 29

Thompson v. Smith, 154 SE 579, 583 Va. (1930) 3, 9

U.S. v. Creswell, 515 F.Supp. 1268 (ED NY 1981) 11, 27

United States v. Daughtrey, 874 F.2d 213 (4th Cir. 1989) 37

U.S. v. General Dynamics, 648 F.Supp. 1497 (1986) i

U.S. v. Jones, 852 F.2d 1235 (9th Cir. NDC 1988) iii

United States v. Schmidt, 935 F.2d 1440 (4th Cir. 1991) 36

U.S. v. Wann & VREEL, 75 F.Supp. 769 (Dist. Col. 1974) 9

Weaver v. Haworth, 410 F. Supp. 1032 (D.C. Okl. 1975) 17

United States Codes:

5 USC 556(e) 11, 25, 26, 27

5 USC 101-559 . . . . . i, 2, 7, 8, 11, 20

5 USC 701-703 . . . . . 8, 9

5 USC 701-706 . . . . . i, 7, 11, 20

5 USC 702 . . . . . 2, 5, 6, 7, 9, 25

5 USC 703 . . . . . 7, 9, 30

5 USC 706 . . . . . 5, 9, 25

18 USC 371 15

18 USC 1512(b) and 2 15

28 USC 1291 28

28 USC 1361 . . . . . 3, 5, 9, 17, 28

28 USC 1651 . . . . . 3, 5, 9, 17, 28

28 USC 1746(1) 32

28 USC 2201 . . . . . 3, 5, 9, 17, 28

28 USC 2202 . . . . . 3, 5, 9, 28

28 USC 2241 . . . . . 7, 17, 28

28 USC 2245 17

28 USC 2255 . . . . . 7, 17

28 USC 2342 9

Federal Rules:

F.R.A.P. 3 28

F.R.App.P. 15(a) 9

F.R.A.P. 21 28

F.R.A.P. 35 24

F.R.A.P. 40 24

F.R.Civ.P. 12 et seq. 16

[e.g., 12(B)(2)]

F.R.Civ.P. 56(a) 23

F.R.Civ.P. 61 3

F.R.Civ.P. 65 9

F.R.Civ.P. Rule 81(b) 5

F.R.Cr.P. 7(c) 19

F.R.Cr.P. 8(a) 19

Constitutional Provisions:

The Constitution of the United States of America, Amendment I 4, 7, 13, 19

The Constitution of the United States of America, Amendment IV 4

The Constitution of the United States of America, Amendment V 4, 19

The Constitution of the United states of America, Amendment VI 19

The Constitution of the United States of America, Article I, Section 8,

Clause 3 ii

The Constitution of the United States of America, Article 1, Section 8, Clause 17 8

The Constitution of the United States of America, Article I, Section 9, Clause 2 13

The Constitution of the United States of America, Article I, Section 9, Clause 3 iii

Uniform Commercial Code:

UCC 1-103 33

UCC 1-203 33

UCC 1-207 33

United States Sentencing Guidelines:

U.S.S.G. Section 2T1.1 37

U.S.S.G. Section 2T1.3 37

U.S.S.G. Section 2T1.4 37

U.S.S.G. Section 2T1.9 . . . . . 36, 37

U.S.S.G. Section 2T1.9(a)(2) 36

Miscellaneous:

4th Cir. R. 34(b) 37

15 Op. AG 262 (1877) 8

17 Op. AG 524 (1883) 8

I.O.P. 36.5 35

I.O.P. 36.6 35

Kniff, Court of Appeals Manual, Section 4.13, Wests' 1981 18

Schwartz, ADMINISTRATIVE LAW, Little Brown Co., Boston, Mass. (1984) 3

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

IN RE LONNIE G. SCHMIDT, PETITIONER

v.

KENNETH HALL, FRANCIS MURNAGHAN, and CLYDE HAMILTON, Judges[1], RESPONDENTS

Petition for WRIT or ORDER in the nature of MANDAMUS or INJUNCTION and associated, derivative, and supplementary remedy and relief, as must needs be.

STRICT SCRUTINY REQUIRED.[2]

COMES NOW, I, the victim aggrieved[3]

---

[1] Federal judges for the Fourth Circuit Court of Appeals.

[2] I am alleging and have as a matter of law proved as to my person, prejudice and irreparable harm, through suspect classification and invidious discrimination, mandating strict scrutiny.

[3] 5 USC 702, 706, see 5 USC 101-559, etc., Miller Brothers Co. v. Maryland, 347 US 340, 342, 345 (1947).

and signatory hereto, appearing specially[1], without and lacking counsel -- petitioning this honorable court for a Writ or Order in the nature of mandamus[2] -- directed to an officer, or two or more officers identified herein -- who is/are under a duty, non-discretionary and ministerial in nature -- to perform or omit to perform -- as I have requested by written motion, request or demand[3], and which remedy and relief was refused to me -- and so arbitrarily and capriciously, as an abuse of discretion and or otherwise unlawfully and unfairly --

---

[1] Long v. Rasmussen, 281 F. 236-239 (Mont. 1921-2) cited as authority in Economy Plumbing v. U.S., 470 F.2d 585 (DC 1972); Cap. (EMI) v. Bennett, 681 F2d 1107 (9 CA 1982).

[2] 28 USC 1361, 1651, 2201, 2202, F.R.Civ.P. 61, see Enoch v. Williams, 291 F2d 402 affd. 370 US 1 (9 CA Calif. 1962) noting that Plaintiff/Appellee cannot prevail under any circumstances, and therefore the Appellate Court having NO discretion but to act as I have requested or to rule in my favor, my constitutional rights to due process having been, are being, shall be, and are threatened to be violated by the acts and omissions herein complained of, wherefore this court has NO discretion but to order and enforce the remedy which I seek. Jaffarian v. Murphy, 183 NE 110, 280 Mass. 402; Thompson v. Smith, 154 SE 579, 583 Va. (1930) cited as authority in Panama Refining v. Ryan, 293 US 388 (1935) as authority, along with Schecter Poultry Co. v. U.S., 295 US 495 (1935), are declared to be still protective of my Person, Schwartz, ADMINISTRATIVE LAW, Little Brown Co., Boston, Mass. (1984).

[3] In re CR 89-114 RDP Emergency Plea to the Jurisdiction, Allocution, 92-5080 Appeal, Petition for Rehearing and Suggestion for Rehearing In Banc.

inflicting actual or immediately threatening -- actual and substantial injury in fact, substantial injury e.g. unlawful imprisonment, deprivation of freedom; constituting prejudice[1] against my Person (see Strict Scrutiny Required), denying to me and violating the Constitutional[2], common law[3], natural law and other requirements for due process[4] and equal protection; which irreparable injury I have already experienced, am experiencing now, and shall continue to experience, -- yet said injury escaping effective review[5] and abatement, and which injury ultimately,

---

[1]Denying me due process, a property right, see Frost v. RC, 271 US 583, 596 (1927); Buttery v. GSC, 300 P 1040.

[2]e.g. 1st Amendment, Right to Petition and implied Right to Remedy; 5th Amendment, Procedural and Common Law Due Process; and 4th Amendment, Substantive Due Process.

[3]Constitution must be construed in light of law, facts, definitions and circumstances of constitutional period, in spite of pervasive presence of admiralty, the common law dominating the inland and personal rights to the exclusion of the harshness of admiralty and discretion of equity.

[4]e.g. corporate, administrative, rudimentary due process.

[5]Roe v. Wade, 410 US 113 RD 410 US 959.

as the record shows is being inflicted in WANT of proof of condition precedent jurisdictional elements and decisions appearing on the condition precedent records (cf. Adoption Statement, at p. 14, infra).

AT LAW -- JURISDICTIONAL STATEMENT[1]

Although in Marbury v. Madison, 1 Cr. (5 US) 137 (1803) -- mandamus as authorized in the 1787-1789 US Statutes at Large, Judiciary Act -- was declared unconstitutional, and was effectively abolished, as declared or re-stated by F.R.Civ.P. Rule 81(b) -- suggesting to the uninformed and naive that the USA/US/District of Columbia, et al., Inc., have willy-nilly unbridled discretion -- the same NOT being true; -- such supposed discretion being severely limited by due

[1]This court has jurisdiction pursuant to 28 USC 1361, 1651, 2201, 2202, and 5 USC 701-706, see especially 702 and 706, and Federal Rules of Civil Procedure, Rule 65.

process, equal protection, fairness and fair play/dealing requirements -- whereupon, and wherefore -- this court has the jurisdiction and duty to receive, accept, file, hear and determine the issues I expressly and impliedly, directly and indirectly, raise on the record, and which I present to this court, (e.g. duty to review and determine the merits of mandamus), under relevant statutes (cf. 5 USC 702 below, etc.), rules and regulations and the decisions, herein expressly and impliedly[1] referenced, on the said records -- including but NOT limited to those set out at supra and below, and to fashion and order and see to it that the remedy I seek is enforced.

I also invoke the doctrine that all

---

[1] see Adoption Statement, infra, p.14, the law requiring this court to officially and judicially notice the applicable law and to declare and enforce it, whether I cite it or not.

federal remedies[1] are the same in substance[2], even though in form and label (mere language) -- they appear to differ, wherefore, I cite also, as authority proving that this court has jurisdiction and duty (supra) -- Bivins v. Six Unknown Narcotics Agents, 403 US 388 (1971); Butz v. Economu, 438 US 478 (1978).

I am entitled to common law mandamus and remedies, see Morgan v. U.S., (1944). This is also in the nature of judicial review -- not only of the common law sort contemplated by Stark v. Wickard, 321 US 288 (1944); Abbot Labs v. Gardner, 387 US 136, 140, 141 (1967) -- entitling me to

---

[1]It is said that no matter what federal remedy is sought, all are the same, including, but not limited to those in the nature of mandamus, Bivens, error coram nobis, Habeas Corpus, (5 USC 703; see 5 USC 101-559); 28 USC 2255, 2241, Bivens v. 6 U.S. Narcotics Agents, 403 US 388 (1971); Butz v. Economou, 438 US 478 (1978) actions, etc., cites omitted.

[2]This appears to be a function of the law and fact involved in the First Amendment, which indicates expressly and impliedly that I have a right to (a) notice, (b) hearings, and (c) remedy and relief, irrespective of its form, noting that I am entitled to the old forms of common law remedy and relief, even if a statute, rule or regulation does NOT provide one, cf. Morgan v. U.S., 346 US 502 (1954); the Constitution (supra) providing the "relevant statute" needed in 5 USC 702 (5 USC 701-706), cf. Colorado v. VA, 430 F.Supp. 551 affd. 602 F.2d 1241 (9CA Wa. 1976); Behan v. Dover, 419 F.Supp. 562 affd. 559 F.2d 1207 (Del. 1976); many other cites omitted.

such remedy and relief, noting that the court below is acting as if an administrative agency, as described directly or indirectly in Kirschbaum v. Walling, 316 US 517, 523.5 (1942), although it appears without and wanting delegated authority to do so appearing on the condition precedent and other records involved; wherefore and otherwise, the Administrative Procedures Act (APA), cf. 5 USC 101-559, and Judicial Review Acts (JRA), cf. 5 USC 701-703 apply even to the court below, as a matter of law, irrespective of whether it is proven or officially and judicially noticed that the said court below is or is NOT a de-jure (Article III) or de-facto (impossible)[2]; or

[2]Article I, Section 8, Clause 17 etc., of the Constitution provides that there is NO, and cannot be any -- constitutional, governmental, legislative, executive, administrative, nor judicial power, authority, discretion, jurisdiction, office or officer outside of the District of Columbia, 15 Op. AG 262 (1877); cf. 17 Op. AG 524, (1883); wherefore although this court has such power, the trial court and judge complained of below does NOT; remembering that NO de-facto officer can exist, absent a de-jure office, cites omitted.

a USURPER agency, cf. U.S. v. Wann & VREEL, 75 F.Supp. 769 (Dist. Col. 1974).

Further, this court has jurisdiction and duty to fashion and grant, order and enforce the remedy and relief I seek, by virtue of sundry rules and regulations, as set out below[1].

EXTRAORDINARY REMEDIES JURISDICTION STATEMENT

This honorable court has jurisdiction and the duty to fashion and order and see to it that the extraordinary statutory, equitable and common law remedy and relief herein referenced is granted, effected and enforced[2], including but NOT limited to that in the nature of mandamus, injunction,

---

[1] 28 USC 1361, 1651, 2201, 2202; F.R.Civ.P. Rule 65; 5 USC 701-702, see particularly 5 USC 702, 706, and 5 USC 703 Habeas Corpus, etc., and F.R.App.P. Rule 15(a) and 28 USC 2342.

[2] I am alleging herein and otherwise in the relevant records and motions, pleas, etc., that my constitutional rights to due process, and equal protection have been and are being violated by the acts and omissions herein complained of (cf. Declaration), wherefore this court and the court below has NO discretion but to order and enforce the remedy which I seek, Jaffarian v. Murphy, Thompson v. Smith, Panama Refining Co. v. Ryan, supra, as authority; which along with the Schecter Poultry Case, supra, are declared to be still protective of my Person, Schwartz, ADMINISTRATIVE LAW, supra.

quo-warranto, scire facias, audita querela, and any and all others which were available at law or in equity (chancery; e.g. British) at the time of adoption of the 1787-1789 Constitution of the USA/US/District of Columbia (Inc.) -- on the following extraordinary, e.g. equitable, grounds (cf. my At Law Jurisdictional Statement, supra), to wit:

This case involved and involves extraordinary[1] circumstances, events, facts, claims and injury -- as complained of in my Declaration at infra, which have caused me to suffer, and which I am suffering, and shall suffer in fact, as actual and irreparable injury, as injury in fact, and which is threatened to be inflicted in the immediate sense, yet to date continuing to escape effective review

---

[1] out of the ordinary, e.g. NOT as at law, e.g. NOT for an award of damages, cf. see Calif. Law "traditional" remedies as at law, same as ordinary, Bank v. Peavey, 69 F 117.

-- and for which irreparable injury, there is NO alternative, speedy, clear, complete, certain nor otherwise adequate remedy at law; and which irreparable injury -- is not only capable of repetition, yet escaping effective review[1], but is being inflicted upon my Person, day by day, and shall be so unlawfully and inequitably inflicted, and so -- in WANT/lack of Jurisdiction having been proven and decided to exist on the involved (e.g. 5 USC 556(e) exclusive record for review and decision, cf. 5 USC 101-559, 701-706)[2] -- the opposition in this matter, e.g. "government" (sic), e.g. respondent (Judge) in this matter -- being

---

[1] Roe v. Wade, 410 US 113 RD 410 US 959.

[2] Plaintiff/Appellee/Respondents et al., if governmental, did NOT follow the rules required in order to establish and prove and obtain a decision by officers of the involved administrative agencies on the issue of jurisdiction, or where no more than private qui-tam informers, failed to exhaust the available and adequate administrative agency level remedies available to them in order to establish the existence of the supposed jurisdiction and jurisdictional elements, jurisdictional facts and quasi-jurisdictional facts, which might otherwise bind my Person, to wit, Respondents et al. failed to seek hearings and decisions on the issues of (a) coverage (jurisdiction), which, as a matter of law, must be sought first in and before the involved administrative agencies (cf. Okl. Press v. Walling, 327 US 186 (1946)), and (b) merits of their claims and penalty (U.S. v. Creswell, 515 F.supp. 1268 (ED NY 1981)).

thus NOT able to prevail under any circumstances;[1] -- the whole of the record, upon proper review under strict scrutiny[2] rules -- and otherwise; -- all involved -- shocking the conscience of reasonable men and certainly shocking the conscience of any honorable court, especially this court.

The five factors necessary for mandamus relief are easily recognizable as extant in my case:

1. I am suffering irreparable harm; this is an extraordinary case and there is no other adequate at law or other means to relief. "The cancerous malady of delay, which haunts our judicial system by

---

[1] Enoch v. Williams, 291 F2d 402 affd. 370 US 1 (9CA Calif. 1962).

[2] I am being, by respondents hereto, classified and punished as if a corporation, whereas I am a natural born, NOT state created individual as in Commonwealth ex rel. Reinboth v. Councils of Pittsburgh, 41 Pa. 278 -- which violates the rule of law which provides that I cannot be classified as a state created creature nor a licensee, associate or beneficiary of the state et al., and that NO code which applies to a mere corporation can be applied to me as a natural born individual, cf. Billings v. Hall, 7 Calif. App 1, 6-7, 11.6, 12.2, 14, 15.5 (1857); Redfield v. Fisher, 292 P 813 (Ore. 1930); Spann v. Dallas, 235 SW 513, 15.4-16 (1921); Hale v. Henkel, 201 US 43 (1905) -- whereas I allege, suspect classification and invidious discrimination -- which requires strict scrutiny, not the usual mere ho-hum review, cf. San Antonio v. Rodriguez, 411 US 1 (1973); Dunn v. Blumstein, 405 US 330 (1972).

postponing the rectification of wrong and those unjustly convicted must be excised from the judicial process at every stage." Rheurk v. Shaw, 628 F2d 297 (5th Cir. 1980).

2. The damage is NOT correctable on appeal. No one can return the days of my life spent in prison, and mere damages awards are inadequate.[1]

3. The court has enacted an ipso-facto suspension of the writ of habeas corpus, in violation of Article I, Section 9, Clause 2 of the Constitution of the United States, by refusing to hear the merits of my Appeal and the District Court's denial of my Plea to the Jurisdiction and failure to respond to my Motion to Reconsider, or issue findings of fact, conclusions of law, bases, reasons

[1]Where Constitutional rights are involved, damages awards as at common law or in equity are inadequate, and my First Amendment right to liberty (Freedom) is being violated and denied, on a repeated basis escaping all other means of review.

and rationale.

4. The District Court's denial and Appellate Court's refusal to hear is an oft repeated error, manifesting a persistent disregard of the United States Constitution, federal statutes and rules, and established case law, see Enoch v. Williams, supra.

A denial and/or violation of Constitutional rights, is a violation of public policy.

5. The court is creating new and important problems. One of those problems is the loss of public confidence in the system when the public finds out that members of the Appellate Judiciary in the 4th Circuit, are violating individual's constitutionally protected rights by covering up the prosecutorial abuses and illegal sentencing practices of the District Court, particularly with those activities being in WANT/lack of all

jurisdictional authority.

For a discussion of the five factors, see Bauman v. District Court, 557 F2d 650, 656-61 (9th Cir. 1977).

DECLARATION

Following a jury trial[1] in the United States District Court for the Western District of North Carolina (Honorable Robert D. Potter, presiding), I, Lonnie G. Schmidt, was convicted of conspiracy to defraud the United States by impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service, in violation of 18 USC 371; conspiracy to commit witness tampering, in violation of 18 USC 371, 1512(b) and 2; and witness tampering, in violation of 18 USC 1512(b) and 2. The Appellate Court affirmed my conviction but, with one judge

[1]CR 89-114 RDP along with co-defendants James Eugene Lewis, Jr. and Thomas C. Dunlap.

dissenting, remanded the case for re-sentencing.

On or about November 1, 1991, I filed a motion at the trial court level entitled EMERGENCY - VERIFIED, PLEA TO THE JURISDICTION over my PERSON, SUBJECT MATTER and TERRITORY, AT COMMON LAW. Therein I raised Twenty-one (21) issues constituting offers of proof (all or most of which appear as settled and uncontroverted on the condition precedent record, to include trial record), as separate affirmative defenses, matters in bar, as confession and avoidance --- each one of which, considered individually (severally), and in any effective combination of two or more and in totality ---constituted or evidenced an irrefutably fatal jurisdictional defect, apparent on the face of the record. Said motion being brought pursuant to pleading at Common Law, F.R. Civ.P. 12 et seq.

[e.g., 12(B)(2)], F.R.Cr.P. 12 et seq. [e.g., 12(B)(2)]; 28 USC 1361, 1651, 2201, 2241, 2245, 2255, noting that a plea to the jurisdiction must be treated as a Rule 12 Motion to Dismiss in the interest of justice, Weaver v. Haworth, 410 F. Supp. 1032 (D.C. Okl. 1975), substance governs over form and labels, Mitchell v. Miller, 214 A2d 694 (Conn. 1965).

Re-sentencing was conducted on January 13, 1992 and I re-alleged the issues and refiled the above referenced Plea to the Jurisdiction, etc, at time of allocution, cf. Sentencing Transcripts, pp. 348-354.

On January 13, 1992, the trial Court denied my Motion to Dismiss, Plea to the Jurisdiction, Arrest of judgment, New trial, etc., etc, without issuing findings of fact, conclusions of law, etc., cf. Sentencing Transcripts p. 354.

On January 13, 1992, I filed a Notice

of Appeal of this decision. Appeal, however, is NOT an adequate remedy, noting that the appellate court's jurisdiction is derivative from, and dependent upon the existence of the jurisdiction of the trial court, which does NOT exist (supra), rendering the appeal process inadequate, Kniff, Court of Appeals Manual, Section 4.13, Wests' 1981.

On January 27, 1992, I filed a MOTION FOR RECONSIDERATION of PLEA TO THE JURISDICTION over my PERSON, SUBJECT MATTER and TERRITORY, AT COMMON LAW and MOTION TO DISMISS FOR WANT OF PERSONAL JURISDICTION, WANT OF JURISDICTION TO IMPOSE IN PERSONAM PENALTY/SANCTION, with the trial Court, demanding findings of fact, conclusions of law, bases, reasons and rationale, in order that I might effect mandamus or appeal. The trial Court has NOT responded as of this date.

On or about June 2, 1992, I filed an Informal Appeal Brief with the 4th Circuit Court of Appeals, re-alleging, adopting and addressing with Points and Authorities, the prior raised issues of such nature as -- a conflict between Circuits, jurisdictional defects, 1st and 5th Amendment violations, Double Jeopardy, denial of Due Process denial and Constitutional questions, e.g., to wit:

(a) Is the Indictment void for duplicity and multiplicity in violation of the 5th and 6th Amendments of the United States Constitutions, and Federal Rules of Criminal Procedure 7(c) and 8(a)?;

(b) The Indictment upon which I was tried and convicted failed to state facts sufficient to constitute the commission of a crime or public offense against the laws of the United Sates of America, or against the US/USA;

(c) Do the laws under which I was prosecuted, by their language or judicial gloss, require administrative hearing, civil proceedings and injunction prior to the government seeking an indictment alleging a violation of these laws? Do the laws expressed and implied in 5 USC 101-559, 701-706 and associated codes and statutes, the Constitution and underlying fundamental law, provide that I was and am entitled to administrative agency level hearing? If so, would a denial or evasion of administrative hearing, civil proceedings and injunction, be a denial of due process, equal protection and essential justice?;

(d) Does the law require the existence of a contract as a substantial relationship (nexus) between my Person and the state?;

(e) Does the VENUE statement on the

indictment deprive the Court of criminal jurisdiction?;

(f) Does failure on the part of the government to follow the Federal Rules of Criminal Procedure constitute a denial of due process?;

(g) Is the Court (trial court) and the judge sitting therein required by law to hold Article III power when presiding in a criminal trial?;

(h) Did the Plaintiff have standing in this action?;

(i) Have I been prosecuted in violation of the US Constitution's prohibition against any form of bill of attainder/pains and penalties?;

(j) Did the Court find that I was within its' territorial, extra-territorial or interstate commerce jurisdiction?;

(k) Does the law require that I be informed of the nature of the charges

against which I must defend?;

(l) Does the law require that I have effective assistance of counsel?;

(m) Did the prosecution have proper delegation of authority to prosecute in the name of and for the United States of America, et al?; and, addressing new issues raised from the re-sentencing, e.g., (n) Were the Sentencing Guidelines applicable to the defendants, upon entry of pleas of NOT GUILTY?;

(o) Did the Court impose a authorized sentence?;

(p) Was the sentence excessive?;

(q) Was the sentence imposed in violation of the Double Jeopardy Clause?;

(r) Does statutory authority exist, for the commitment and custody of the defendants?;

(s) Is it possible for a legitimate decision to issue contrary to defendants

position and claims, in the absence of on the record jurisdictional findings and pleas?

Issue (b), ALONE, deprives the court of primary or original jurisdiction.

The Government did NOT file a reply to my Opening Brief.

On or about July 20, 1992, I filed a MOTION FOR SUMMARY JUDGEMENT, PURSUANT TO F.R.CIV.P. RULE 56(a), with accompanying AFFIDAVIT.

The Government did NOT oppose my Motion for Summary Judgment.

The 4th Circuit Appellate Court's Order of April 15, 1992, page 1, second paragraph stated "The Court will review the entire record on appeal for possible meritorious issues; it will not limit its review solely to the issues raised in the parties' briefs."

On December 31, 1992, the 4th Circuit

Court of Appeals affirmed the sentences imposed by the district court by unpublished per curiam opinion. The Appellate Court failed to address ANY of the above referenced (a) - (s) issues raised, or to make findings of fact as to other possible meritorious issues. See attached Opinion.

On January 13, 1993, I filed with the 4th Circuit Court of Appeals a PETITION FOR REHEARING (F.R.A.P 40) and SUGGESTION FOR REHEARING IN BANC (F.R.A.P. 35).

On February 9, 1993, said Petition for Rehearing and Suggestion for Rehearing In Banc, was denied.

There is absolutely NO special allegation, pleading, nor proof of the existence of supposed jurisdiction over my Person and subject matter related thereto, e.g., my life, liberty, property, etc., nor over the territory --- appearing on the

condition precedent records, such as the 5 USC 556(e) records (e.g., I was NOT arraigned before the trial court or any other court pursuant to this action). I have already suffered severe and irreparable harm --- being imprisoned in WANT of proof of jurisdiction, for more than THREE YEARS, even though I committed NO crime, plaintiff in the criminal trial having proved NO offense (supra), my constitutionally protected rights to due process and equal protection having therefore and otherwise been denied or violated, as the record shall reveal upon proper (strict scrutiny) review.

I have suffered legal wrong at the hands of actual or apparent administrative agencies (5 USC 702) and have been adversely affected and aggrieved by agency action within the meaning of a relevant statute (5 USC 702), and I am entitled to

judicial review thereof (5 USC 702, 706), Stark v. Wickard, etc., supra.

The Federal Judiciary of the 4th Circuit Court of Appeals had NO discretion to ignore my properly and timely filed APPEAL FOR RELIEF FROM VOID JUDGMENT, WITH ISSUES PRESENTED IN INFORMAL BRIEF AND ATTACHED MEMORANDUM OF LAW, WITH POINTS AND AUTHORITIES IN SUPPORT THEREOF, or MOTION FOR SUMMARY JUDGMENT, for inter-alia, it being a civil action, with fees paid in advance --- my cause of action is presumed to exist, even if challenged --- whether by Respondents, et al., or the Court, Burks v. Lasker, 441 US 471, 476 & n.5 (1979).

ADOPTION

Petitioner hereby adopts in pertinent part, by reference and incorporation as if set forth fully and at length hereinat, all the following, to wit: The 5 USC 556(e) exclusive records for review and decision;

all law, procedure and evidence thereof, including but not limited to the following: Colonial and prior Charters; Constitutions, Acts of Congress, Enabling Acts, Rules and Regulations, Codes and laws, decisions and legal texts[1]; and I adopt all records of and everything which proceeded prior to and at trial, and evidence of the absence and inadequacy thereof, sentencing and post-conviction relief, in pertinent part as operates in any form and supporting any of my claims and argument, but not as may seem to run contrary thereto, including but not limited to absence of evidence of the hearings to which I was entitled, and proofs of the existence of the supposed jurisdiction, cf. Crowell v. Benson, 285 US 22, 51-65 (1932) and merits of the charges and penalties to be imposed, cf. U.S. v.

[1] and 5 USC 556(e) and the exclusive record for remedies and decisions and evidence, transcripts, and evidence of the lack or insufficiency of same.

Creswell, 515 F.Supp. 1268 (EDNY 1981).

SUMMARY

I have shown THAT I have pursued all of my administrative remedies, and they have proven to be ineffective and inadequate; and, THAT I am not required to further pursue administrative remedies[1]; THAT 28 USC 1291, 1361, 1651, 2201, 2202, 2241, F.R. Civ. P. rule 60(b)(4), F.R.A.P. Rule 3, 21, the corresponding Rules of the Fourth Circuit and Supreme Court of the United States, are the proper statutes and rules under which to proceed in order that the judgment of conviction entered March 2, 1990, and the sentence executed January 13, 1992, by the trial Court in this action, be VACATED, the indictment quashed and dismissed with prejudice; THAT the trial

[1]Appeals are indeed in the nature of administrative remedies which I cannot be compelled to, nor penalized nor prejudiced by failing to seek or exhaust mere appeals. Appeals were designed for those parties and persons which were/are not entitled to common law remedies, such as corporations or persons holding or benefitted by state created privileges, franchises, licenses or receiving benefits as a result of possession of such franchises, privileges, licenses, etc.

court lacked original jurisdiction of any person the subject matter (supra) and otherwise; THAT I have been incarcerated for over THREE YEARS in WANT of proof of jurisdiction appearing on the condition precedent records; THAT the disregard of my Appeal by Circuit Judges KENNETH HALL, FRANCIS MURNAGHAN, and CLYDE HAMILTON, was arbitrary and capricious, and an abuse of discretion; THAT I have suffered, am now suffering, and will continue to suffer irreparable harm and injury, yet escaping effective review, remedy and abatement; and THAT the respondent or government (sic) cannot prevail under any circumstances; THAT strict scrutiny is required due to suspect classification and invidious discrimination; and THAT irrespective of any of the above, I am entitled to Common Law judicial review, see Stark v. Wickard, 321 US 288, 309, 310 (1944); Abbot Labs v.

Gardner, 387 US 136, 140, 141 (1967); Garvey v. Freeman, 397 F2d 605 (1968) and Robbins v. Reagan, 780 F2d 37 (D.C. 1975), etc., etc. ad infinitum, see 5 USC 703 Habeas Corpus; Morgan v. U.S., (1954).

CONCLUSION

WHEREFORE, my Constitutional rights to rudimentary, corporate, procedural, common law, administrative, primary and substantial due process have been violated, and any further delay[1] in the hearing of my petition and the ruling in my favor for the release of my Person, and denial of my request for remedy and relief herein would be arbitrary, capricious and an abuse of discretion; and therefore and otherwise as the record reveals, I am entitled to all remedy and relief which is expressly and impliedly referenced herein, and in

[1]Delay in this case constitutes a jurisdictional defect – compounding the other per se jurisdictional defects – all shocking the conscience of this court, mandating, even militating an order for my immediate release on Habeas Corpus, or remedy in the nature thereof.

addition thereto, any and all other at law and extraordinary or other remedy and relief as the court may notice are applicable, and which I may move for at a later date.

PRAYER FOR RELIEF

WITH ALL DUE RESPECT, Petitioner, being unlawfully, in want of jurisdiction, deprived of my life, liberty and property, prays that this court fashion, grant, effect, and see to it that the following remedy and relief is enforced: That a Writ or Order in the nature of Mandamus directed to the Honorable Judges KENNETH HALL, FRANCIS MURNAGHAN and CLYDE HAMILTON, issue from this Court forthwith, mandating that a Writ of Habeas Corpus be ordered, and an Order of Discharge issue, to result in the immediate and unconditional release of my Person from custody; or in the alternative, a hearing on the merits of issues (a) - (s)

and others first referenced herein and raised on APPEAL FOR RELIEF FROM VOID JUDGMENT No. 92-5080, be ordered and scheduled, and that the Appellate Judges be directed to enter into the record written findings of fact, conclusions of law, and supporting bases, reasons and rationale for any and all decisions; or, that my MOTION FOR SUMMARY JUDGMENT be granted, and judgment entered in my favor.

VERIFICATION

I, Lonnie G. Schmidt, the above named defendant and undersigned signatory hereto, as the affiant hereof, first being duly sworn and/or affirmed by the invocation of, without prejudice, 28 USC 1746(1), upon my affirmation do depose, state under pain and penalty of perjury, and say that I am competent to testify to the matters stated herein, that I have personal knowledge of the facts stated herein, and that they are

true and correct in their entirety, are admissible as evidence, and are made in good faith, under duress, without prejudice, under objection, see UCC 1-103, 1-203, 1-207.

Dated: May 7, 1993

Lonnie G. Schmidt, Petitioner, Appearing without and lacking counsel, and without prejudice, UCC 1-207.

APPENDIX

Page

4TH CIR. UNPUBLISHED PER CURIAM

OPINION 1b

ORDER DENYING PETITION FOR

REHEARING 1g

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee	)	
V.	)	No. 92-5080
LONNIE GLEN SCHMIDT, Defendant-Appellant.	)	

UNITED STATES v. SCHMIDT

Affirmed by unpublished per curiam opinion.

COUNSEL

Lonnie Glen Schmidt, James Eugene Lewis, Thomas Calvin Dunlap, Sr., Appellants Pro Se. Alan Hechtkopf, Brett Mary Dignam, Robert E. Lindsey, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding

precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Lonnie Glen Schmidt, James Eugene Lewis, and Thomas Calvin Dunlap were convicted by a jury of a number of tax law violations as a result of their participation in a fraudulent investment scheme known as "Unincorporated Business Organizations" (UBOs). Schmidt was sentenced to serve 108 months imprisonment, followed by three years of supervised release, under the United States Sentencing Guidelines; Lewis was sentenced to four years' imprisonment on the non-guidelines counts and fifty-seven months' imprisonment on the counts imposed under the guidelines, to run consecutively, followed by three years of supervised release; Dunlap was

sentenced under the guidelines to eighty-four months' imprisonment, followed by three years of supervised release. We affirmed all convictions but remanded for resentencing on the guidelines counts. United States v. Schmidt, 935 F.2d 1440 (4th Cir. 1991).

At issue was the proper calculation of the "tax loss" for purposes of arriving at a base offense level. We held that the district court had incorrectly calculated a base offense level of fourteen by using a method which overstated the government's tax loss. After a lengthy resentencing hearing, the district court applied U.S.S.G. Section 2T1.9(a)(2), which establishes a minimum base offense level of ten. From the final sentences imposed, Schmidt, Lewis, and Dunlap appeal.

The sentences here are governed by U.S.S.G. Section 2T1.9, "Conspiracy to

Impair, Impede or Defeat Tax." Under U.S.S.G. Section 2T1.9, the base offense level is the greater of 10 or the offense level determined from U.S.S.G. Section 2T1.1 (inapplicable here) or U.S.S.G. Section 2T1.3, which calculates the base offense level on the basis of "tax loss" from the Tax Table in U.S.S.G. Section 2T1.4. The district court, after remand, determined that "tax loss" could not be accurately calculated and instead applied the minimum base offense level of ten. This is a factual determination which we review for clear error. United States v. Daughtrey, 874 F.2d 213 (4th Cir. 1989). We find no such error and, therefore, affirm the sentences imposed by the district court.[1] We dispense with oral argument because the facts and legal

[1]We deny the motions for summary judgement filed by Schmidt and Dunlap because, contrary to their assertions, this Court does not require Appellees to file informal briefs. See 4th Cir. R. 34 (b).

contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 92-5080
CR-89-114-C

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LONNIE GLEN SCHMIDT,

Defendant-Appellant

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition

for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

Bert M. Montague
Clerk

FILED
February 9, 1993